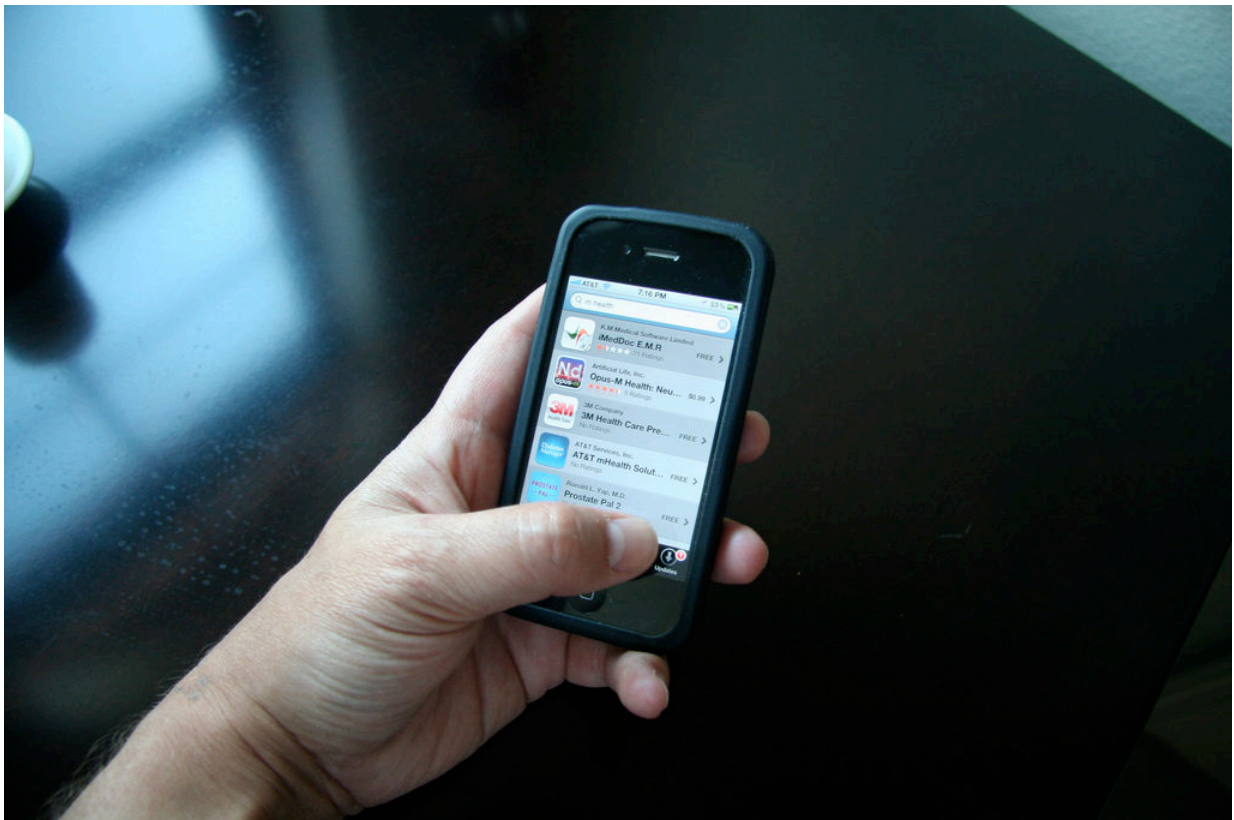


Regulating for Globalization

Trade, Labor and EU Law Perspectives

A manifesto to reform the Gig Economy

Valerio De Stefano (Osgoode Hall (Canada)) · Wednesday, May 1st, 2019



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In 2017, Sarah O'Connor of the [Financial Times](#) published a sensible plea, gently chiding both doomsayers warning of a “jobless society” and “techno-fantasists” paying breathless homage to a digital future filled with exciting new professions. “We should worry less about the jobs that might be going,” wrote O'Connor—due, for example, to as-yet-unrealized promises of advanced automation—and focus on improving pay and working conditions for yet undervalued and oft-neglected jobs we know will remain in high demand, such as care and domestic work.

In an issue of *Pagina99* we took up this invitation with a focus on pay and working conditions in the “gig economy.” The business of digital labour platforms has been growing steadily, worth 28 billion euros in turnover in Europe alone, and with hundreds of thousands of people involved on the supply side. We thus thought it may be useful to update and re-launch this “manifesto”, which includes what we think are still useful proposals to “save the gig economy from itself.”

A crucial part of the future of work is likely to take the form of typical gig economy relationships: just-in-time, part-time, discontinuous, agile, vulnerable, precarious. It is therefore advisable to develop standards for digital labour platforms now.

In recent months, the European Parliament and the European Commission have [started down this path](#). The debate on the platform economy is intimately connected with the issue of creating quality jobs. Silenced at the beginning, obscured by tax and competition issues, the question of quality jobs has slowly wound its way through the debate about digital platforms and is finally asserting itself vigorously. Many reports produced on behalf of state agencies confirm that much of the competitive advantage of new platform- and app-based players derives from their failure to comply with labour or social security regulations.

Freelancers working on Upwork, domestic workers working for Helpling, or couriers working for Deliveroo, show us how jobs in many sectors could be broken down into small pieces and assigned to the lowest bidder, forcibly classified as self-employed, with few rights, no benefits, and very little security or stability. It is therefore now time to temper the impulse to technological novelty—so often overhyped as “innovation”—with sustained and serious action to safeguard workers’ rights and build worker power in digital labour platforms.

Our proposals want to contribute to this debate. This is not a full package, or a replicable scheme for all platforms, given the heterogeneity of the phenomenon. At the same time, we want to make clear that we do not think of the platform economy as an isolated universe. [Many problems that platform workers face also affect other non-standard workers](#), and in particular, dependent self-employed persons and casual workers. Our suggestions are addressed not only to the “masters of algorithms,” but also to lawmakers, employers’ organisations, labour unions and, crucially, to workers.

Since its founding, the International Labour Organization has affirmed that “Labour is not a commodity.” We can now update this proclamation: **“Labour is not a technology.”** With this in mind, here is a list of achievable goals to ensure a healthy “digital transition.”

Employment contracts for “regulars”

1. The more mature and sustainable platforms should offer regular employment contracts for the contingent of workers who perform most of the work. It should be considered that, [in an increasing number of cases](#), courts [reclassified](#) platform workers as employees of the platform. After a phase dedicated to start-up, collected metrics and data can help define a number of regular employees – also part-time – taking into account the times when certain services are most required. Platforms could, however, continue to use self-employed or temporary workers to cope with “peaks” in demand. In the United States, platform economy companies such as *Honor*, *Hello Alfred*, and *Managed by Q* that want to offer quality services have realized that they need to retain, train, motivate, and reward workers – so they hire them as employees. For on-demand businesses, [hiring workers as employees](#) could send a clear message regarding their financial health and could help refute allegations about predatory business models.

A Code of Conduct

2. A Code of Conduct should be set up and enforced in order to discipline the minimum levels of

payment by the platforms, increase the transparency of criteria applied in the operation of rating systems, and ensure the legitimacy of content exchanged online. The code adopted by several German platforms, the “*Crowdsourcing Code of Conduct*,” while far from perfect, is a step in the right direction. This short document lists some best practices for governing work in these new digitally mediated non-standard work environments and offers a catalogue of behaviours to be avoided. Good governance plays a crucial role when it comes to shaping expectations, interactions, and results in the platform, customer, and worker relationships. It is time to define a “*social responsibility by default*” model which promotes transparency of internal processes, especially in case of sanctions such as downgrading or deactivation of workers’ accounts.

Payment Rules

3. Clear rules on payments and the consequences of the refusal of completed tasks by the client should be established. Currently, many operators’ terms of service allow unsatisfied customers to retain a product without compensating the worker, with no explanation required for the worker. Workers must be allowed to challenge rejections they believe are mistaken, unfair, or fraudulent. One can imagine an independent dispute settlement system on the quality of the rendered service, with a panel of arbitrators representing all parties involved, in order to ensure the neutrality of the decision (binding in this case).

Out of the Grey Area

4. To reassure investors who may already be aware of legal battles that in many European countries have blocked several gig economy services, platforms should “normalize” themselves and give up the claim that they are operating in a grey area of law. The competition triggered by some apps is appreciable, and there is no lack of initiatives to update the most obsolete regulations to accommodate new digitally-enabled business models. Many incumbents that have recently enjoyed an almost monopolistic advantage are now being positively “infected” by the innovation virus. The next and most important step, however, is to implement existing rules that *safeguard workers’ rights in the context of digitally-mediated work relationships*.

Outsourcing

5. On-demand work is sometimes used to disguise “*in house*” *outsourcing*. That is, an internal position is eliminated, and then a contractor is hired to perform those duties. Contractors find themselves working side by side with a “normally employed” colleague, performing the same tasks but for less pay and with less job security and fewer rights. When this happens, one should refer to the collective agreement of “comparable” professionals as a way to assess the appropriateness of the working conditions applied in terms of timetable, shifts, remuneration, protection, insurance, and work tools. When these *collective agreements* do not exist, a default set of standards should be established by regulators.

Working standards for all — professionals and amateurs

6. Some workers work on platforms and apps as a way to provide supplemental income rather than relying on them as the main income source. At the same time, we must not lose sight of the fact that, for many workers, the compensation earned through the platform is an essential or main source of income. More generally, the fact that one rides a bicycle for delivering meals or completes online tasks (whether they are routine or creative) for the purpose of earning “extra” money, in addition to another source of income, does not justify lowering the standard of

working conditions. Accordingly, the reasons behind the choice of working for a platform or app should not have any impact on workers' treatment or on their working conditions. Therefore, there are no solid arguments to justify exceptions to platform workers' rights, including for "amateurs" who do not rely on income from their platform work to meet basic needs.

Protection of self-employed workers

7. For those who turn to digital platforms because of the potential organizational flexibility, personalized shifts or complex projects without tight deadlines should be guaranteed. Even when platforms make use of a self-employed contractor, **minimum standards should be guaranteed**, such as the right not to be discriminated against, access to collective bargaining, occupational health and safety measures, a living wage, transparency and accountability of rating and payment systems, training opportunities, and ownership over one's work history data. In this case, managerial prerogatives of the platforms should be limited, especially if they could turn into direct surveillance, periodic training or detailed directives over the work done (which are typical prerogatives of "traditional" employers).

A portable rating

8. The digital fingerprint of our lives is increasingly important, and it is even more important for those workers who are tightly tied to their own reputation – the "stars" or reviews left by customers after the work is done. The rating accrued on a platform, as well as the working history that led to that rating (the clients served, the tasks completed) represents a personal portfolio of credibility and professionalism: it must be "portable" and indeed should be the property of the worker. Moreover, it is important to ensure adaptability and interoperability with the digital careers built over time on other platforms. In this regard, it is necessary to remove any exclusivity clauses binding workers or, in case they are still to be applied, to consider them as genuine non-competition clauses, which must be compensated.

Union renewal and "new" unions

9. Despite fragmentation and isolation, platform workers, whether employed or self-employed, have **collective rights to exercise**, including the right to bargain collectively also with regard to their compensation, a right too often curtailed by a shortsighted application of antitrust standards against vulnerable workers. For this reason, representative bodies for these workers should be set up. An example is offered by Foodora couriers in Vienna, Austria, who recently established the first works council for platform- or app-based workers. Delegates can be entrusted with representation and bargaining roles. Traditional labour unions, with their sectoral and territorial federations, should promote initiatives aimed at raising awareness about working conditions in app- and platform-based work. They should also support initiatives by platform- and app-based workers to organize – even if they are sometimes undertaken by small, new, or "non-traditional" unions that may at first appear "naive." Traditional unions ignore these developments at their own peril – but they do not need to compete with the new ones. Rather, both large established unions and new, small, flexible unions have their strengths and weaknesses, and can and should support each other.

Minimum Working Time

10. Policymakers can regulate the gig economy as a form of casual employment, perhaps by taking as a model the Dutch scheme for regulating "zero-hour contracts." In this scheme, after a few

months, the worker must be guaranteed minimum working hours on the basis of the average hours worked in the previous quarter. The demand for casual work is on the rise: therefore, flexible but serious schemes for contractualising and protecting “intermittent” workers are required. The [new EU Directive on transparent and predictable working conditions](#) sets forth some protections for on-demand workers that are a good starting point to improve the working conditions of these workers, including those who work on platforms.

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(*) Views expressed are the authors’ and do not necessarily reflect the opinions of their organizations.

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